



October 2000

Federal Child Support Guidelines: Reference Manual

On November 1, 2000, certain technical amendments to the Federal Child Support Guidelines will come into force. Enclosed, please find materials from the Child Support Team, Department of Justice Canada, to update your copy of the *Federal Child Support Guidelines: Reference Manual*. These include:

- a revised contents page;
- the Federal Child Support Guidelines, as amended November 1, 2000. Please replace the original document under the Reference documents tab with this document. (Please note this edition of the guidelines includes the April 1, 1999, amendment acknowledging the addition of Nunavut);
- an excerpt from the Canada Gazette which includes the technical amendments to the guidelines, as well as the Regulatory Impact Analysis Statement; and
- an updated map titled "Child Support Guidelines across Canada," reflecting the implementation of provincial child support guidelines for the Yukon. Please replace the existing map at the back of Tab J with the new map.

Also enclosed, please find an article prepared by the Canada Customs and Revenue Agency (CCRA) to clarify how the Canada Child Tax Benefit is paid when parents separate or divorce. "Canada Child Tax Benefit—Which parent is entitled to it?" is provided for your information and does not form part of the Reference Manual. If you have any questions about the Canada Child Tax Benefit or this article, please contact the CCRA at 1-800-387-1193.



Octobre 2000

***Lignes directrices fédérales sur les pensions alimentaires pour enfants :
Manuel de référence***

Le 1^{er} novembre 2000, certaines modifications techniques aux Lignes directrices fédérales sur les pensions alimentaires pour enfants entreront en vigueur. Les documents ci-joints de l'Équipe sur les pensions alimentaires pour enfants, du ministère de la Justice du Canada, vous aideront à mettre à jour votre exemplaire des *Lignes directrices fédérales sur les pensions alimentaires pour enfants : Manuel de référence*. Parmi ces documents, on retrouve :

- une table des matières révisée;
- les Lignes directrices fédérales sur les pensions alimentaires pour enfants, telles que modifiées le 1^{er} novembre 2000. Veuillez remplacer la version originale, sous l'onglet *Documents de consultation*, par la nouvelle. (Il est à noter que la nouvelle version des Lignes directrices comprend les modifications du 1^{er} avril 1999 et tient compte ainsi de l'ajout du Nunavut);
- un extrait de la Gazette du Canada, qui comprend les modifications techniques aux Lignes directrices, ainsi que le Résumé d'étude d'impact de la réglementation;
- une carte à jour intitulée « Lignes directrices sur les pensions alimentaires pour enfants au Canada », qui reflète la mise en œuvre des lignes directrices provinciales au Yukon. Veuillez remplacer l'ancienne carte, au verso de l'onglet J, par la nouvelle.

Vous trouverez également un article préparé par l'Agence des douanes et du revenu du Canada (ADRC), lequel clarifie la façon dont la prestation fiscale canadienne pour enfants est versée en cas de séparation ou de divorce. « La prestation fiscale canadienne pour enfants : lequel des deux parents y a droit? » vous est fourni à titre d'information et ne fait pas partie du Manuel de référence. Si vous avez des questions au sujet de la prestation fiscale canadienne pour enfants ou de cet article, prière de communiquer avec l'ADRC au 1 (800) 387-1194.

Table of Contents

TITLE

INTRODUCTION

OVERVIEW

Child Support Guidelines Legislation: An Overview
by Philip M. Epstein, Q.C., Epstein, Cole, Toronto, Ontario

A. TAXES

Tax Changes and the Child Support Guidelines
by Professor Nicholas Bala, Queen's University, Kingston, Ontario

B. SPECIAL OR EXTRAORDINARY EXPENSES

Special or Extraordinary Expense
by Jim M. Stoffman, Q.C., Taylor McCaffrey, Winnipeg, Manitoba

C. VARIATION APPLICATIONS

Variation Applications
by Judy N. Boyes, B.A., LL.B., Turnbull Boyes, Calgary, Alberta

D. SUGGESTIONS FOR PRACTITIONERS

Suggestions for Practitioners
by Daphne E. Dumont, Q.C., Macnutt & Dumont, Charlottetown, P.E.I.

Shared Custody: The American Experience
by Laura W. Morgan, Esquire, Virginia, United States of America

E. CONTRACTING OUT AND SPECIAL PROVISIONS

Contracting Out and Special Provisions in the Federal Child Support Guidelines
by V. Jennifer Mackinnon, Burke-Robertson, Ottawa, Ontario

F. JUDICIAL DISCRETION

The Proposed Child Support Guideline Package: The Scope of Judicial Discretion
by Professor James G. McLeod, University of Western Ontario, London, Ontario

G. INCOME

Federal Child Support Guidelines: Definition of Income

by Andrew J. Freedman C.A., C.B.V., A.S.A., Cole Valuation Partners Ltd., Toronto, Ontario

Financial Disclosure Obligations Under the Federal Child Support Guidelines

by Cheryl R. Lean, B.A., LL.B., Lean & Matheson, Ottawa, Ontario

The Definition of Income for the Purposes of Applying Child Support Guidelines

by Stephen R. Pittman C.A., C.B.V., C.F.E., Ernst & Young, Ottawa, Ontario

An Accountant's Response to Common Questions Regarding Determination of Income— Self-Employment Situations

by Blair A. Corkum, C.F.P., R.F.P., C.A., PricewaterhouseCoopers, Charlottetown, P.E.I.

Guidance for Determining Income Under the Federal Child Support Guidelines

by Vivian M. Alterman, C.A., C.B.V., Cole & Partners, Toronto, Ontario

H. UNDUE HARDSHIP

Undue Hardship

by Professor D.A. Rollie Thompson, Dalhousie Law School, Halifax, Nova Scotia

Of Camels and Rich Men: Undue Hardship, Part II

by Professor D.A. Rollie Thompson, Dalhousie Law School, Halifax, Nova Scotia

I. CASE STUDIES

Case Studies - The Complete Workbook

J. DESIGNATIONS

Designations - What Does This Mean?

Jurisdiction Chart - September 1998

Quebec Guidelines for the Determination of Child Support

by Jean-Marie Fortin, M. Fisc., Fontaine, Désy, Sherbrooke, Quebec

Comparison of Federal and Quebec Regulations for Determining Child Support

by Dominique Goubau, Laval University, Quebec, Quebec

A Provincial Overview—Designations and Differences

by Karen LeVasseur, Legal Counsel, Supreme Court of Canada, Ottawa, Ontario

K. EMERGING TRENDS: WINTER 1998 UPDATE

First Impressions of the Implementation of the Guidelines

by Associate Dean Nicholas Bala, Faculty of Law, Queen's University, Kingston, Ontario

A Review of the Concepts and Case Law

by Heather L. McKay, Shennette Leuschner McKay, Calgary, Alberta

Reduction in Conflict? A View from the Trenches

by Jim M. Stoffman, Q.C., Taylor McCaffrey, Winnipeg, Manitoba

Practitioner's View of the Guidelines

by Barbara Thompson and Lynn Rockman,

Steinberg Allard Thompson d'Artois Rockman George, Ottawa, Ontario

Reforming the Child Support Guidelines

by Professor Nicholas Bala, Faculty of Law, Queen's University, Kingston, Ontario

L. ENFORCEMENT

Facilitating Enforcement: A Federal Perspective

by Deborah MacNair, Corporate Counsel, Department of Justice Canada

REFERENCE DOCUMENTS

A Consolidation of the *Divorce Act*

Fact Sheet: Minor Technical Amendments to the Federal Child Support Guidelines (1997)

Excerpt from the *Canada Gazette, Part II*, September 13, 2000 including technical amendments to the Federal Child Support Guidelines and the Regulatory Impact Analysis Statement (RIAS)

Federal Child Support Guidelines, as amended November 1, 2000

Instruction Sheet: How to Use the Simplified Federal Child Support Tables

Simplified Tables of Federal Child Support Amounts



Federal Child Support Guidelines

As established May 1, 1997 (*SOR/97-175*)
As amended, effective December 9, 1997 (*SOR/97-563*)
As amended, effective April 1, 1999 (*SOR/99-136*)
As amended, effective November 1, 2000 (*SOR/00-337*)



TABLE OF PROVISIONS
FEDERAL CHILD SUPPORT GUIDELINES

(This table is not part of the Guidelines.)

OBJECTIVES

1. Objectives

INTERPRETATION

2. Definitions

AMOUNT OF CHILD SUPPORT

3. Presumptive rule
4. Incomes over \$150,000
5. Spouse in place of a parent
6. Medical and dental insurance
7. Special or extraordinary expenses
8. Split custody
9. Shared custody
10. Undue hardship

ELEMENTS OF A CHILD SUPPORT ORDER

11. Form of payments
12. Security
13. Information to be specified in order

VARIATION OF CHILD SUPPORT ORDERS

14. Circumstances for variation

INCOME

- 15. Determination of annual income
- 16. Calculation of annual income
- 17. Pattern of income
- 18. Shareholder, director or officer
- 19. Imputing income
- 20. Non-resident

INCOME INFORMATION

- 21. Obligation of applicant
- 22. Failure to comply
- 23. Adverse inference
- 24. Failure to comply with court order
- 25. Continuing obligation to provide income information
- 26. Provincial child support services

COMING INTO FORCE

- 27. Coming into force

**SCHEDULE I
SCHEDULE II
SCHEDULE III**

FEDERAL CHILD SUPPORT GUIDELINES

OBJECTIVES

Objectives

1. The objectives of these Guidelines are

(a) to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation;

(b) to reduce conflict and tension between spouses by making the calculation of child support orders more objective;

(c) to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and encouraging settlement; and

(d) to ensure consistent treatment of spouses and children who are in similar circumstances.

INTERPRETATION

Definitions

2. (1) The definitions in this subsection apply in these Guidelines.

"Act"

« *Loi* »

"Act" means the *Divorce Act*.

"child"

« *enfant* »

"child" means a child of the marriage.

"income"

« *revenu* »

"income" means the annual income determined under sections 15 to 20.

"order assignee"
« *cessionnaire de la
créance alimentaire* »

"order assignee" means a minister, member or agency referred to in subsection 20.1(1) of the Act to whom a child support order is assigned in accordance with that subsection.

"spouse"
« *époux* »

"spouse" has the meaning assigned by subsection 2(1) of the Act, and includes a former spouse.

"table"
« *table* »

"table" means a federal child support table set out in Schedule I.

Income Tax Act

(2) Words and expressions that are used in sections 15 to 21 and that are not defined in this section have the meanings assigned to them under the *Income Tax Act*.

Most current information

(3) Where, for the purposes of these Guidelines, any amount is determined on the basis of specified information, the most current information must be used.

Application of Guidelines

(4) In addition to child support orders, these Guidelines apply, with such modifications as the circumstances require, to

- (a) interim orders under subsections 15.1(2) and 19(9) of the Act;
- (b) orders varying a child support order;
- (c) orders referred to in subsection 19(7) of the Act; and
- (d) recalculations under paragraph 25.1(1)(b) of the Act.

Recalculations

(5) For greater certainty, the provisions of these Guidelines that confer a discretionary power on a court do not apply to recalculations under paragraph 25.1(1)(b) of the Act by a provincial child support service.

AMOUNT OF CHILD SUPPORT

Presumptive rule

3. (1) Unless otherwise provided under these Guidelines, the amount of a child support order for children under the age of majority is

(a) the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates and the income of the spouse against whom the order is sought; and

(b) the amount, if any, determined under section 7.

Child the age of majority or over

(2) Unless otherwise provided under these Guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support order is

(a) the amount determined by applying these Guidelines as if the child were under the age of majority; or

(b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.

Applicable table

(3) The applicable table is

(a) if the spouse against whom an order is sought resides in Canada,

(i) the table for the province in which that spouse ordinarily resides at the time the application for the child support order, or for a variation order in respect of a child support order, is made or the amount is to be recalculated under section 25.1 of the Act,

(ii) where the court is satisfied that the province in which that spouse ordinarily resides has changed since the time described in subparagraph (i), the table for the province in which the spouse ordinarily resides at the time of determining the amount of support, or

(iii) where the court is satisfied that, in the near future after determination of the amount of support, that spouse will ordinarily reside in a given province other than the province in which the spouse ordinarily resides at the time of that determination, the table for the given province; and

(b) if the spouse against whom an order is sought resides outside of Canada, or if the residence of that spouse is unknown, the table for the province where the other spouse ordinarily resides at the time the application for the child support order or for a variation order in respect of a child support order is made or the amount is to be recalculated under section 25.1 of the Act.

SOR/97-563, s. 1

**Incomes over
\$150,000**

4. Where the income of the spouse against whom a child support order is sought is over \$150,000, the amount of a child support order is

(a) the amount determined under section 3; or

(b) if the court considers that amount to be inappropriate,

(i) in respect of the first \$150,000 of the spouse's income, the amount set out in the applicable table for the number of children under the age of majority to whom the order relates;

(ii) in respect of the balance of the spouse's income, the amount that the court considers appropriate, having regard to the condition, means, needs and other circumstances of the children who are entitled to support and the financial ability of each spouse to contribute to the support of the children; and

(iii) the amount, if any, determined under section 7.

**Spouse in place of a
parent**

5. Where the spouse against whom a child support order is sought stands in the place of a parent for a child, the amount of a child support order is, in respect of that spouse, such amount as the court considers appropriate, having regard to these Guidelines and any other parent's legal duty to support the child.

Medical and dental insurance

6. In making a child support order, where medical or dental insurance coverage for the child is available to either spouse through his or her employer or otherwise at a reasonable rate, the court may order that coverage be acquired or continued.

Special or extraordinary expenses

7. (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:

- (a) child care expenses incurred as a result of the custodial parent's employment, illness, disability or education or training for employment;
- (b) that portion of the medical and dental insurance premiums attributable to the child;
- (c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
- (d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
- (e) expenses for post-secondary education; and
- (f) extraordinary expenses for extracurricular activities.

SOR/00-337, s. 1(1), (2), (3)

Sharing of expense

(2) The guiding principle in determining the amount of an expense referred to in subsection (1) is that the expense is shared by the spouses in proportion to their respective incomes after deducting from the expense, the contribution, if any, from the child.

**Subsidies, tax
deductions, etc.**

(3) In determining the amount of an expense referred to in subsection (1), the court must take into account any subsidies, benefits or income tax deductions or credits relating to the expense, and any eligibility to claim a subsidy, benefit or income tax deduction or credit relating to the expense.

Split custody

8. Where each spouse has custody of one or more children, the amount of a child support order is the difference between the amount that each spouse would otherwise pay if a child support order were sought against each of the spouses.

Shared custody

9. Where a spouse exercises a right of access to, or has physical custody of, a child for not less than 40 per cent of the time over the course of a year, the amount of the child support order must be determined by taking into account

- (a) the amounts set out in the applicable tables for each of the spouses;
- (b) the increased costs of shared custody arrangements; and
- (c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.

Undue hardship

10. (1) On either spouse's application, a court may award an amount of child support that is different from the amount determined under any of sections 3 to 5, 8 or 9 if the court finds that the spouse making the request, or a child in respect of whom the request is made, would otherwise suffer undue hardship.

**Circumstances that
may cause undue
hardship**

(2) Circumstances that may cause a spouse or child to suffer undue hardship include the following:

- (a) the spouse has responsibility for an unusually high level of debts reasonably incurred to support the spouses and their children prior to the separation or to earn a living;
- (b) the spouse has unusually high expenses in relation to exercising access to a child;

(c) the spouse has a legal duty under a judgment, order or written separation agreement to support any person;

(d) the spouse has a legal duty to support a child, other than a child of the marriage, who is

(i) under the age of majority, or

(ii) the age of majority or over but is unable, by reason of illness, disability or other cause, to obtain the necessities of life; and

(e) the spouse has a legal duty to support any person who is unable to obtain the necessities of life due to an illness or disability.

**Standards of living
must be considered**

(3) Despite a determination of undue hardship under subsection (1), an application under that subsection must be denied by the court if it is of the opinion that the household of the spouse who claims undue hardship would, after determining the amount of child support under any of sections 3 to 5, 8 or 9, have a higher standard of living than the household of the other spouse.

**Standards of
living test**

(4) In comparing standards of living for the purpose of subsection (3), the court may use the comparison of household standards of living test set out in Schedule II.

Reasonable time

(5) Where the court awards a different amount of child support under subsection (1), it may specify, in the child support order, a reasonable time for the satisfaction of any obligation arising from circumstances that cause undue hardship and the amount payable at the end of that time.

Reasons

(6) Where the court makes a child support order in a different amount under this section, it must record its reasons for doing so.

ELEMENTS OF A CHILD SUPPORT ORDER

Form of payments

11. The court may require in a child support order that the amount payable under the order be paid in periodic payments, in a lump sum or in a lump sum and periodic payments.

Security

12. The court may require in the child support order that the amount payable under the order be paid or secured, or paid and secured, in the manner specified in the order.

Information to be specified in order

13. A child support order must include the following information:

- (a) the name and birth date of each child to whom the order relates;
- (b) the income of any spouse whose income is used to determine the amount of the child support order;
- (c) the amount determined under paragraph 3(1)(a) for the number of children to whom the order relates;
- (d) the amount determined under paragraph 3(2)(b) for a child the age of majority or over;
- (e) the particulars of any expense described in subsection 7(1), the child to whom the expense relates, and the amount of the expense or, where that amount cannot be determined, the proportion to be paid in relation to the expense; and
- (f) the date on which the lump sum or first payment is payable and the day of the month or other time period on which all subsequent payments are to be made.

VARIATION OF CHILD SUPPORT ORDERS

Circumstances for variation

14. For the purposes of subsection 17(4) of the Act, any one of the following constitutes a change of circumstances that gives rise to the making of a variation order in respect of a child support order:

- (a) in the case where the amount of child support includes a determination made in accordance with the applicable table, any change in circumstances that would result in a different child support order or any provision thereof;
- (b) in the case where the amount of child support does not include a determination made in accordance with a table, any change in the condition, means, needs or other circumstances of either spouse or of any child who is entitled to support; and

(c) in the case of an order made before May 1, 1997, the coming into force of section 15.1 of the Act, enacted by section 2 of chapter 1 of the Statutes of Canada, (1997).

SOR/97-563, s. 2

SOR/00-337, s. 2

INCOME

Determination of annual income

15. (1) Subject to subsection (2), a spouse's annual income is determined by the court in accordance with sections 16 to 20.

Agreement

(2) Where both spouses agree in writing on the annual income of a spouse, the court may consider that amount to be the spouse's income for the purposes of these Guidelines if the court thinks that the amount is reasonable having regard to the income information provided under section 21.

Calculation of annual income

16. Subject to sections 17 to 20, a spouse's annual income is determined using the sources of income set out under the heading "Total income" in the T1 General form issued by the Canada Customs and Revenue Agency and is adjusted in accordance with Schedule III.

SOR/00-337, s. 3

Pattern of income

17. (1) If the court is of the opinion that the determination of a spouse's annual income under section 16 would not be the fairest determination of that income, the court may have regard to the spouse's income over the last three years and determine an amount that is fair and reasonable in light of any pattern of income, fluctuation in income or receipt of a non-recurring amount during those years.

SOR/00-337, s. 4

Non-recurring losses

(2) Where a spouse has incurred a non-recurring capital or business investment loss, the court may, if it is of the opinion that the determination of the spouse's annual income under section 16 would not provide the fairest determination of the annual income, choose not to apply sections 6 and 7 of Schedule III, and adjust the amount of the loss, including related expenses and carrying charges and interest expenses, to arrive at such amount as the court considers appropriate.

Shareholder, director or officer

18. (1) Where a spouse is a shareholder, director or officer of a corporation and the court is of the opinion that the amount of the spouse's annual income as determined under section 16 does not fairly reflect all the money available to the spouse for the payment of child support, the court may consider the situations described in section 17 and determine the spouse's annual income to include

(a) all or part of the pre-tax income of the corporation, and of any corporation that is related to that corporation, for the most recent taxation year; or

(b) an amount commensurate with the services that the spouse provides to the corporation, provided that the amount does not exceed the corporation's pre-tax income.

Adjustment to corporation's pre-tax income

(2) In determining the pre-tax income of a corporation for the purposes of subsection (1), all amounts paid by the corporation as salaries, wages or management fees, or other payments or benefits, to or on behalf of persons with whom the corporation does not deal at arm's length must be added to the pre-tax income, unless the spouse establishes that the payments were reasonable in the circumstances.

Imputing income

19. (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

(a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;

(b) the spouse is exempt from paying federal or provincial income tax;

(c) the spouse lives in a country that has effective rates of income tax that are significantly lower than those in Canada;

(d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;

(e) the spouse's property is not reasonably utilized to generate income;

(f) the spouse has failed to provide income information when under a legal obligation to do so;

(g) the spouse unreasonably deducts expenses from income;

(h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; and

(i) the spouse is a beneficiary under a trust and is or will be in receipt of income or other benefits from the trust.

SOR/00-337, s. 5

Reasonableness of expenses

(2) For the purpose of paragraph (1)(g), the reasonableness of an expense deduction is not solely governed by whether the deduction is permitted under the *Income Tax Act*.

Non-resident

20. Where a spouse is a non-resident of Canada, the spouse's annual income is determined as though the spouse were a resident of Canada.

INCOME INFORMATION

Obligation of applicant

21. (1) A spouse who is applying for a child support order and whose income information is necessary to determine the amount of the order must include the following with the application:

(a) a copy of every personal income tax return filed by the spouse for each of the three most recent taxation years;

(b) a copy of every notice of assessment and reassessment issued to the spouse for each of the three most recent taxation years;

(c) where the spouse is an employee, the most recent statement of earnings indicating the total earnings paid in the year to date, including overtime or, where such a statement is not provided by the employer, a letter from the spouse's employer setting out that information including the spouse's rate of annual salary or remuneration;

(d) where the spouse is self-employed, for the three most recent taxation years

(i) the financial statements of the spouse's business or professional practice, other than a partnership, and

(ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the spouse does not deal at arm's length;

(e) where the spouse is a partner in a partnership, confirmation of the spouse's income and draw from, and capital in, the partnership for its three most recent taxation years;

(f) where the spouse controls a corporation, for its three most recent taxation years

(i) the financial statements of the corporation and its subsidiaries, and

(ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation, and every related corporation, does not deal at arm's length;

(g) where the spouse is a beneficiary under a trust, a copy of the trust settlement agreement and copies of the trust's three most recent financial statements; and

(h) in addition to any income information that must be included under paragraphs (c) to (g), where the spouse receives income from employment insurance, social assistance, a pension, workers compensation, disability payments or any other source, the most recent statement of income indicating the total amount of income from the applicable source during the current year, or if such a statement is not provided, a letter from the appropriate authority stating the required information.

SOR/00-337, s. 6(1), (2)

Obligation of respondent

(2) A spouse who is served with an application for a child support order and whose income information is necessary to determine the amount of the order, must, within 30 days after the application is served if the spouse resides in Canada or the United States or within 60 days if the spouse resides elsewhere, or such other time limit as the court specifies, provide the court, as well as the other spouse or the order assignee, as the case may be, with the documents referred to in subsection (1).

Special expenses or undue hardship

(3) Where, in the course of proceedings in respect of an application for a child support order, a spouse requests an amount to cover expenses referred to in subsection 7(1) or pleads undue hardship, the spouse who would be receiving the amount of child support must, within 30 days after the amount is sought or undue hardship is pleaded if the spouse resides in Canada or the United States or within 60 days if the spouse resides elsewhere, or such other time limit as the court specifies, provide the court and the other spouse with the documents referred to in subsection (1).

Income over \$150,000

(4) Where, in the course of proceedings in respect of an application for a child support order, it is established that the income of the spouse who would be paying the amount of child support is greater than \$150,000, the other spouse must, within 30 days after the income is established to be greater than \$150,000 if the other spouse resides in Canada or the United States or within 60 days if the other spouse resides elsewhere, or such other time limit as the court specifies, provide the court and the spouse with the documents referred to in subsection (1).

Making of rules not precluded

(5) Nothing in this section precludes the making of rules by a competent authority, within the meaning of section 25 of the Act, respecting the disclosure of income information that is considered necessary for the purposes of the determination of an amount of a child support order.

Failure to comply

22. (1) Where a spouse fails to comply with section 21, the other spouse may apply

(a) to have the application for a child support order set down for a hearing, or move for judgment; or

(b) for an order requiring the spouse who failed to comply to provide the court, as well as the other spouse or order assignee, as the case may be, with the required documents.

Costs of the proceedings

(2) Where a court makes an order under paragraph (1)(a) or (b), the court may award costs in favour of the other spouse up to an amount that fully compensates the other spouse for all costs incurred in the proceedings.

Adverse inference

23. Where the court proceeds to a hearing on the basis of an application under paragraph 22(1)(a), the court may draw an adverse inference against the spouse who failed to comply and impute income to that spouse in such amount as it considers appropriate.

Failure to comply with court order

24. Where a spouse fails to comply with an order issued on the basis of an application under paragraph 22(1)(b), the court may

(a) strike out any of the spouse's pleadings;

(b) make a contempt order against the spouse;

(c) proceed to a hearing, in the course of which it may draw an adverse inference against the spouse and impute income to that spouse in such amount as it considers appropriate; and

(d) award costs in favour of the other spouse up to an amount that fully compensates the other spouse for all costs incurred in the proceedings.

**Continuing
obligation to provide
income information**

25. (1) Every spouse against whom a child support order has been made must, on the written request of the other spouse or the order assignee, not more than once a year after the making of the order and as long as the child is a child within the meaning of these Guidelines, provide that other spouse or the order assignee with

(a) the documents referred to in subsection 21(1) for any of the three most recent taxation years for which the spouse has not previously provided the documents;

(b) as applicable, any current information, in writing, about the status of any expenses included in the order pursuant to subsection 7(1); and

(c) as applicable, any current information, in writing, about the circumstances relied on by the court in a determination of undue hardship.

**Below minimum
income**

(2) Where a court has determined that the spouse against whom a child support order is sought does not have to pay child support because his or her income level is below the minimum amount required for application of the tables, that spouse must, on the written request of the other spouse, not more than once a year after the determination and as long as the child is a child within the meaning of these Guidelines, provide the other spouse with the documents referred to in subsection 21(1) for any of the three most recent taxation years for which the spouse has not previously provided the documents.

**Obligation of
receiving spouse**

(3) Where the income information of the spouse in favour of whom a child support order is made is used to determine the amount of the order, the spouse must, not more than once a year after the making of the order and as long as the child is a child within the meaning of these Guidelines, on the written request of the other spouse, provide the other spouse with the documents and information referred to in subsection (1).

Information requests

(4) Where a spouse or an order assignee requests information from the other spouse under any of subsections (1) to (3) and the income information of the requesting spouse is used to determine the amount of the child support order, the requesting spouse or order assignee must include the documents and information referred to in subsection (1) with the request.

SOR/97-563, s. 3

Time Limit

(5) A spouse who receives a request made under any of subsections (1) to (3) must provide the required documents within 30 days after the request's receipt if the spouse resides in Canada or the United States and within 60 days after the request's receipt if the spouse resides elsewhere.

Deemed receipt

(6) A request made under any of subsections (1) to (3) is deemed to have been received 10 days after it is sent.

Failure to comply

(7) A court may, on application by either spouse or an order assignee, where the other spouse has failed to comply with any of subsections (1) to (3)

(a) consider the other spouse to be in contempt of court and award costs in favour of the applicant up to an amount that fully compensates the applicant for all costs incurred in the proceedings; or

(b) make an order requiring the other spouse to provide the required documents to the court, as well as to the spouse or order assignee, as the case may be.

Unenforceable provision

(8) A provision in a judgment, order or agreement purporting to limit a spouse's obligation to provide documents under this section is unenforceable.

Provincial child support services

26. A spouse or an order assignee may appoint a provincial child support service to act on their behalf for the purposes of requesting and receiving income information under any of subsections 25(1) to (3), as well as for the purposes of an application under subsection 25(7).

COMING INTO FORCE

Coming into force

27. These Guidelines come into force on May 1, 1997.

SCHEDULE I

(Subsection 2(1))

FEDERAL CHILD SUPPORT TABLES

Notes:

1. The federal child support tables set out the amount of monthly child support payments for each province on the basis of the annual income of the spouse ordered to pay child support (the "support payer") and the number of children for whom a table amount is payable. Refer to these Guidelines to determine whether special measures apply.
2. There is a threshold level of income below which no amount of child support is payable. Child support amounts are specified for incomes up to \$150,000 per year. Refer to section 4 of these Guidelines to determine the amount of child support payments for support payers with annual incomes over \$150,000.
3. Income is set out in the tables in intervals of \$1,000. Monthly amounts are determined by adding the basic amount and the amount calculated by multiplying the applicable percentage by the portion of the income that exceeds the lower amount within that interval of income.

Example:

Province: British Columbia

Number of children: 2

Annual income of support payer: \$33,760

Basic amount: \$480

Percentage: 1.20%

Lower amount of the income interval: \$33,000

The amount of monthly child support is calculated as follows:

$$\$480 + [1.2\% \times (\$33,760 - \$33,000)]$$

$$\$480 + [1.2/100 \times \$760]$$

$$\$480 + [0.012 \times \$760]$$

$$\$480 + \$9.12 = \$489.12$$

4. There are separate tables for each province. The amounts vary from one province to another because of differences in provincial income tax rates. The tables are in the following order:
 - (a) Ontario;
 - (b) Quebec;
 - (c) Nova Scotia;
 - (d) New Brunswick;

- (e) *Manitoba;*
- (f) *British Columbia;*
- (g) *Prince Edward Island;*
- (h) *Saskatchewan;*
- (i) *Alberta;*
- (j) *Newfoundland;*
- (k) *Yukon;*
- (l) *Northwest Territories; and*
- (m) *Nunavut.*

5. *The amounts in the tables are based on economic studies of average spending on children in families at different income levels in Canada. They are calculated on the basis that child support payments are no longer taxable in the hands of the receiving parent and no longer deductible by the paying parent. They are calculated using a mathematical formula and generated by a computer program.*
6. *The formula referred to in note 5 sets support amounts to reflect average expenditures on children by a spouse with a particular number of children and level of income. The calculation is based on the support payer's income. The formula uses the basic personal amount for non-refundable tax credits to recognize personal expenses, and takes other federal and provincial income taxes and credits into account. Federal Child Tax benefits and Goods and Services Tax credits for children are excluded from the calculation. At lower income levels, the formula sets the amounts to take into account the combined impact of taxes and child support payments on the support payer's limited disposable income.*

SOR/99-136, s. 1

SCHEDULE II

(Subsection 10(4))

COMPARISON OF HOUSEHOLD STANDARDS OF LIVING TEST

Definitions

1. The definitions in this section apply in this Schedule.

"child"

« *enfant* »

"child" means a child of the marriage or a child who

(a) is under the age of majority; or

(b) is the age of majority or over but is unable, by reason of illness, disability or other cause to obtain the necessities of life.

"household"

« *ménage* »

"household" means a spouse and any of the following persons residing with the spouse

(a) any person who has a legal duty to support the spouse or whom the spouse has a legal duty to support;

(b) any person who shares living expenses with the spouse or from whom the spouse otherwise receives an economic benefit as a result of living with that person, if the court considers it reasonable for that person to be considered part of the household; and

(c) any child whom the spouse or the person described in paragraph (a) or (b) has a legal duty to support.

"taxable income"

« *revenu imposable* »

"taxable income" means the annual taxable income determined using the calculations required to determine "Taxable Income" in the T1 General form issued by the Canada Customs and Revenue Agency.

SOR/97-563, s. 10

SOR/00-337, s. 7(1), (2)

Test

2. The comparison of household standards of living test is as follows:

STEP 1

Establish the annual income of each person in each household by applying the formula

$$A - B$$

where

A is the person's income determined under sections 15 to 20 of these Guidelines, and

B is the federal and provincial taxes payable on the person's taxable income.

Where the information on which to base the income determination is not provided, the court may impute income in the amount it considers appropriate.

STEP 2

Adjust the annual income of each person in each household by

(a) deducting the following amounts, calculated on an annual basis:

(i) any amount relied on by the court as a factor that resulted in a determination of undue hardship, except any amount attributable to the support of a member of the household that is not incurred due to a disability or serious illness of that member,

(ii) the amount that would otherwise be payable by the person in respect of a child to whom the order relates, if the pleading of undue hardship was not made,

(A) under the applicable table, or

(B) as is considered by the court to be appropriate, where the court considers the table amount to be inappropriate,

(iii) any amount of support that is paid by the person under a judgment, order or written separation agreement, except

(A) an amount already deducted under subparagraph (i), and

(B) an amount paid by the person in respect of a child to whom the order referred to in subparagraph (ii) relates; and

(b) adding the following amounts, calculated on an annual basis:

(i) any amount that would otherwise be receivable by the person in respect of a child to whom the order relates, if the pleading of undue hardship was not made,

(A) under the applicable table, or

(B) as is considered by the court to be appropriate, where the court considers the table amount to be inappropriate.

(ii) any amount of child support that the person has received for any child under a judgment, order or written separation agreement.

SOR/97-563, s. 11(1), (2)

STEP 3

Add the amounts of adjusted annual income for all the persons in each household to determine the total household income for each household.

STEP 4

Determine the applicable low-income measures amount for each household based on the following:

Low-income Measures

Household Size	Low-income Measures Amount
One person 1 adult	\$10,382
Two persons 2 adults	\$14,535
1 adult and 1 child	\$14,535

Low-income Measures (cont'd)

Household Size	Low-income Measures Amount
Three persons	
3 adults	\$18,688
2 adults and 1 child	\$17,649
1 adult and 2 children	\$17,649
Four persons	
4 adults	\$22,840
3 adults and 1 child	\$21,802
2 adults and 2 children	\$20,764
1 adult and 3 children	\$20,764
Five persons	
5 adults	\$26,993
4 adults and 1 child	\$25,955
3 adults and 2 children	\$24,917
2 adults and 3 children	\$23,879
1 adult and 4 children	\$23,879
Six persons	
6 adults	\$31,145
5 adults and 1 child	\$30,108
4 adults and 2 children	\$29,070
3 adults and 3 children	\$28,031
2 adults and 4 children	\$26,993
1 adult and 5 children	\$26,993
Seven persons	
7 adults	\$34,261
6 adults and 1 child	\$33,222
5 adults and 2 children	\$32,184
4 adults and 3 children	\$31,146
3 adults and 4 children	\$30,108
2 adults and 5 children	\$29,070
1 adult and 6 children	\$29,070
Eight persons	
8 adults	\$38,413
7 adults and 1 child	\$37,375
6 adults and 2 children	\$36,337
5 adults and 3 children	\$35,299
4 adults and 4 children	\$34,261
3 adults and 5 children	\$33,222
2 adults and 6 children	\$32,184
1 adult and 7 children	\$32,184

STEP 5

Divide the household income amount (Step 3) by the low-income measures amount (Step 4) to get a household income ratio for each household.

STEP 6

Compare the household income ratios. The household that has the higher ratio has the higher standard of living.

SCHEDULE III

(Section 16)

ADJUSTMENTS TO INCOME

Employment expenses

1. Where the spouse is an employee, the spouse's applicable employment expenses described in the following provisions of the *Income Tax Act* are deducted:

- (a) [Repealed] SOR/2000-337, s. 8 (1);
- (b) paragraph 8(1)(d) concerning expenses of teacher's exchange fund contribution;
- (c) paragraph 8(1)(e) concerning expenses of railway employees;
- (d) paragraph 8(1)(f) concerning sales expenses;
- (e) paragraph 8(1)(g) concerning transport employee's expenses;
- (f) paragraph 8(1)(h) concerning travel expenses;
- (f.1) paragraph 8(1)(h.1) concerning motor vehicle travel expenses;
- (g) paragraph 8(1)(i) concerning dues and other expenses of performing duties;
- (h) paragraph 8(1)(j) concerning motor vehicle and aircraft costs;
- (i) paragraph 8(1)(l.1) concerning *Canada Pension Plan* contributions and *Employment Insurance Act* premiums paid in respect of another employee who acts as an assistant or substitute for the spouse;
- (j) paragraph 8(1)(n) concerning salary reimbursement;
- (k) paragraph 8(1)(o) concerning forfeited amounts;
- (l) paragraph 8(1)(p) concerning musical instrument costs; and
- (m) paragraph 8(1)(q) concerning artists' employment expenses.

SOR/97-563, s. 12

SOR/00-337, s. 8(1), (2)

Child support

2. Deduct any child support received that is included to determine total income in the T1 General form issued by the Canada Customs and Revenue Agency.

SOR/97-563, s. 13

SOR/00-337, s. 9

Spousal support

3. (1) To calculate income for the purpose of determining an amount under an applicable table, deduct the spousal support received from the other spouse.

**Special or
extraordinary
expenses**

(2) To calculate income for the purpose of determining an amount under section 7 of these Guidelines, deduct the spousal support paid to the other spouse.

Social assistance

4. Deduct any amount of social assistance income that is not attributable to the spouse.

SOR/00-337, s. 10

**Dividends from
taxable Canadian
corporations**

5. Replace the taxable amount of dividends from taxable Canadian corporations received by the spouse by the actual amount of those dividends received by the spouse.

**Capital gains and
capital losses**

6. Replace the taxable capital gains realized in a year by the spouse by the actual amount of capital gains realized by the spouse in excess of the spouse's actual capital losses in that year.

**Business investment
losses**

7. Deduct the actual amount of business investment losses suffered by the spouse during the year.

Carrying charges

8. Deduct the spouse's carrying charges and interest expenses that are paid by the spouse and that would be deductible under the *Income Tax Act*.

**Net self-employment
income**

9. Where the spouse's net self-employment income is determined by deducting an amount for salaries, benefits, wages or management fees, or other payments, paid to or on behalf of persons with whom the spouse does not deal at arm's length, include that amount, unless the spouse establishes that the payments were necessary to earn the self-employment income and were reasonable in the circumstances.

Additional amount

10. Where the spouse reports income from self-employment that, in accordance with sections 34.1 and 34.2 of the *Income Tax Act*, includes an additional amount earned in a prior period, deduct the amount earned in the prior period, net of reserves.

SOR/00-337, s. 11

Capital cost allowance for property

11. Include the spouse's deduction for an allowable capital cost allowance with respect to real property.

Partnership or sole proprietorship income

12. Where the spouse earns income through a partnership or sole proprietorship, deduct any amount included in income that is properly required by the partnership or sole proprietorship for purposes of capitalization.

SOR/97-563, s. 14

Employee stock options with a Canadian-controlled private corporation

13. (1) Where the spouse has received, as an employee benefit, options to purchase shares of a Canadian-controlled private corporation and has exercised those options during the year, add the difference between the value of the shares at the time the options are exercised and the amount paid by the spouse for the shares and any amount paid to acquire the options to purchase the shares, to the income for the year in which the options are exercised.

Disposal of shares

(2) If the spouse has disposed of the shares during a year, deduct from the income for that year the difference determined under subsection (1).

SOR/00-337, s. 12



Canada Gazette



Gazette du Canada

Part II

Partie II

OTTAWA, WEDNESDAY, SEPTEMBER 13, 2000

OTTAWA, LE MERCREDI 13 SEPTEMBRE 2000

Statutory Instruments 2000

Textes réglementaires 2000

SOR/2000-325 to 347 and SI/2000-78 to 83

DORS/2000-325 à 347 et TR/2000-78 à 83

Pages 2056 to 2234

Pages 2056 à 2234

NOTICE TO READERS

The *Canada Gazette* Part II is published under authority of the *Statutory Instruments Act* on January 5, 2000 and at least every second Wednesday thereafter.

Part II of the *Canada Gazette* contains all "regulations" as defined in the *Statutory Instruments Act* and certain other classes of statutory instruments and documents required to be published therein. However, certain regulations and classes of regulations are exempted from publication by section 15 of the *Statutory Instruments Regulations* made pursuant to section 20 of the *Statutory Instruments Act*.

Each regulation or statutory instrument published in this number may be obtained as a separate reprint from Canadian Government Publishing, Public Works and Government Services Canada. Rates will be quoted on request.

The *Canada Gazette* Part II is available in most libraries for consultation.

For residents of Canada, the cost of an annual subscription to the *Canada Gazette* Part II is \$67.50, and single issues, \$3.50. For residents of other countries, the cost of a subscription is US\$67.50 and single issues, US\$3.50. Orders should be addressed to: Canadian Government Publishing, Public Works and Government Services Canada, Ottawa, Canada K1A 0S9.

Copies of Statutory Instruments that have been registered with the Clerk of the Privy Council are available, in both official languages, for inspection and sale at Room 418, Blackburn Building, 85 Sparks Street, Ottawa, Canada.

AVIS AU LECTEUR

La *Gazette du Canada* Partie II est publiée en vertu de la *Loi sur les textes réglementaires* le 5 janvier 2000 et au moins tous les deux mercredis par la suite.

La Partie II de la *Gazette du Canada* est le recueil des « règlements » définis comme tels dans la loi précitée et de certaines autres catégories de textes réglementaires et de documents qu'il est prescrit d'y publier. Cependant, certains règlements et catégories de règlements sont soustraits à la publication par l'article 15 du *Règlement sur les textes réglementaires*, établi en vertu de l'article 20 de la *Loi sur les textes réglementaires*.

Il est possible d'obtenir un tiré à part de tout règlement ou de tout texte réglementaire publié dans le présent numéro en s'adressant aux Éditions du gouvernement du Canada, Travaux publics et Services gouvernementaux Canada. Le tarif sera indiqué sur demande.

On peut consulter la *Gazette du Canada* Partie II dans la plupart des bibliothèques.

Pour les résidents du Canada, le prix de l'abonnement annuel à la *Gazette du Canada* Partie II est de 67,50 \$ et le prix d'un exemplaire, de 3,50 \$. Pour les résidents d'autres pays, le prix de l'abonnement est de 67,50 \$US et le prix d'un exemplaire, de 3,50 \$US. Veuillez adresser les commandes à : Les Éditions du gouvernement du Canada, Travaux publics et Services gouvernementaux Canada, Ottawa, Canada K1A 0S9.

Des exemplaires des textes réglementaires enregistrés par le greffier du Conseil privé sont à la disposition du public, dans les deux langues officielles, pour examen et vente à la pièce 418, édifice Blackburn, 85, rue Sparks, Ottawa, Canada.

Registration
SOR/2000-337 23 August, 2000

DIVORCE ACT

Guidelines Amending the Federal Child Support Guidelines

P.C. 2000-1352 23 August, 2000

Her Excellency the Governor General in Council, on the recommendation of the Minister of Justice, pursuant to section 26.1^a of the *Divorce Act*^b, hereby makes the annexed *Guidelines Amending the Federal Child Support Guidelines*.

GUIDELINES AMENDING THE FEDERAL CHILD SUPPORT GUIDELINES

AMENDMENTS

1. (1) The portion of subsection 7(1) of the *Federal Child Support Guidelines*¹ before paragraph (a) is replaced by the following:

Special or
extraordinary
expenses

7. (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:

(2) Paragraph 7(1)(c) of the Guidelines is replaced by the following:

(c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;

(3) Paragraph 7(1)(d) of the English version of the Guidelines is replaced by the following:

(d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;

^a S.C. 1997, c. 1, s. 11
^b R.S., c. 3 (2nd Supp.)
¹ SOR/97-175

Enregistrement
DORS/2000-337 23 août 2000

LOI SUR LE DIVORCE

Lignes directrices modifiant les Lignes directrices fédérales sur les pensions alimentaires pour enfants

C.P. 2000-1352 23 août 2000

Sur recommandation de la ministre de la Justice et en vertu de l'article 26.1^a de la *Loi sur le divorce*^b, Son Excellence la Gouverneure générale en conseil établit les *Lignes directrices modifiant les Lignes directrices fédérales sur les pensions alimentaires pour enfants*, ci-après.

LIGNES DIRECTRICES MODIFIANT LES LIGNES DIRECTRICES FÉDÉRALES SUR LES PENSIONS ALIMENTAIRES POUR ENFANTS

MODIFICATIONS

1. (1) Le passage du paragraphe 7(1) des *Lignes directrices fédérales sur les pensions alimentaires pour enfants*¹ précédant l'alinéa a) est remplacé par ce qui suit :

7. (1) Le tribunal peut, sur demande de l'un des époux, prévoir dans l'ordonnance alimentaire une somme, qui peut être estimative, pour couvrir tout ou partie des frais ci-après, compte tenu de leur nécessité par rapport à l'intérêt de l'enfant et de leur caractère raisonnable par rapport aux ressources des époux et de l'enfant et, le cas échéant, aux habitudes de dépense de la famille avant la séparation :

Dépenses
spéciales ou
extraordinaires

(2) L'alinéa 7(1)c) des mêmes lignes directrices est remplacé par ce qui suit :

c) les frais relatifs aux soins de santé dépassant d'au moins 100 \$ par année la somme que la compagnie d'assurance rembourse, notamment les traitements orthodontiques, les consultations professionnelles d'un psychologue, travailleur social, psychiatre ou toute autre personne, la physiothérapie, l'ergothérapie, l'orthophonie, les médicaments délivrés sur ordonnance, les prothèses auditives, les lunettes et les lentilles cornéennes;

(3) L'alinéa 7(1)d) de la version anglaise des mêmes lignes directrices est remplacé par ce qui suit :

(d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;

^a L.C. 1997, ch. 1, art. 11
^b L.R., ch. 3 (2^e suppl.)
¹ DORS/97-175

	2. The portion of section 14² of the Guidelines before paragraph (a) is replaced by the following: 14. For the purposes of subsection 17(4) of the Act, any one of the following constitutes a change of circumstances that gives rise to the making of a variation order in respect of a child support order:	2. Le passage de l'article 14² des mêmes lignes directrices précédant l'alinéa a) est remplacé par ce qui suit : 14. Pour l'application du paragraphe 17(4) de la Loi, l'un ou l'autre des changements ci-après constitue un changement de situation au titre duquel une ordonnance alimentaire modificative peut être rendue :	
Circumstances for variation			Changements de situation
	3. Section 16 of the Guidelines is replaced by the following: 16. Subject to sections 17 to 20, a spouse's annual income is determined using the sources of income set out under the heading "Total income" in the T1 General form issued by the Canada Customs and Revenue Agency and is adjusted in accordance with Schedule III.	3. L'article 16 des mêmes lignes directrices est remplacé par ce qui suit : 16. Sous réserve des articles 17 à 20, le revenu annuel de l'époux est déterminé au moyen des sources de revenu figurant sous la rubrique « Revenu total » dans la formule T1 Générale établie par l'Agence des douanes et du revenu du Canada, et est rajusté conformément à l'annexe III.	
Calculation of annual income			Calcul du revenu annuel
	4. Subsection 17(1) of the Guidelines is replaced by the following: 17. (1) If the court is of the opinion that the determination of a spouse's annual income under section 16 would not be the fairest determination of that income, the court may have regard to the spouse's income over the last three years and determine an amount that is fair and reasonable in light of any pattern of income, fluctuation in income or receipt of a non-recurring amount during those years.	4. Le paragraphe 17(1) des mêmes lignes directrices est remplacé par ce qui suit : 17. (1) S'il est d'avis que la détermination du revenu annuel de l'époux en application de l'article 16 ne correspond pas à la détermination la plus équitable, le tribunal peut, compte tenu du revenu de l'époux pour les trois dernières années, déterminer une somme équitable et raisonnable en fonction de toute tendance ou fluctuation du revenu au cours de cette période ou de toute somme non récurrente reçue au cours de celle-ci.	
Pattern of income			Tendance du revenu
	5. Paragraph 19(1)(h) of the Guidelines is replaced by the following: (h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; and	5. L'alinéa 19(1)(h) des mêmes lignes directrices est remplacé par ce qui suit : h) il tire une portion considérable de son revenu de dividendes, de gains en capital ou d'autres sources qui sont imposés à un taux moindre que le revenu d'emploi ou d'entreprise ou qui sont exonérés d'impôt;	
	6. (1) Paragraph 21(1)(b) of the Guidelines is replaced by the following: (b) a copy of every notice of assessment and reassessment issued to the spouse for each of the three most recent taxation years;	6. (1) L'alinéa 21(1)(b) des mêmes lignes directrices est remplacé par ce qui suit : b) une copie de ses avis de cotisation et de nouvelle cotisation, pour les trois dernières années d'imposition;	
	(2) Subsection 21(1) of the Guidelines is amended by striking out the word "and" at the end of paragraph (f), by adding the word "and" at the end of paragraph (g) and by adding the following after paragraph (g): (h) in addition to any income information that must be included under paragraphs (c) to (g), where the spouse receives income from employment insurance, social assistance, a pension, workers compensation, disability payments or any other source, the most recent statement of income indicating the total amount of income from the applicable source during the current year, or if such a statement is not provided, a letter from the appropriate authority stating the required information.	(2) Le paragraphe 21(1) des mêmes lignes directrices est modifié par adjonction, après l'alinéa g), de ce qui suit : h) en plus de tout renseignement à joindre à sa demande aux termes des alinéas c) à g), s'il a reçu un revenu au titre de l'assurance-emploi, de l'assistance sociale, d'une pension, d'indemnités d'accident du travail, de prestations d'invalidité ou un revenu de toute autre source, le dernier relevé indiquant la somme totale versée durant l'année en cours à l'égard de la source applicable ou, si un tel relevé n'est pas fourni, une lettre de l'autorité en cause indiquant cette somme.	

² SOR/97-563² DORS/97-563

	7. (1) The definition "average tax rate" in section 1 of Schedule II to the Guidelines is repealed. (2) The definition "taxable income" in section 1 of Schedule II is replaced by the following: "taxable income" means the annual taxable income determined using the calculations required to determine "Taxable Income" in the T1 General form issued by the Canada Customs and Revenue Agency. 8. (1) Paragraph 1(a) of Schedule III to the Guidelines is repealed. (2) Section 1 of Schedule III to the Guidelines is amended by adding the following after paragraph (f): (f.1) paragraph 8(1)(h.1) concerning motor vehicle travel expenses; 9. Section 2² of Schedule III to the Guidelines is replaced by the following: 2. Deduct any child support received that is included to determine total income in the T1 General form issued by the Canada Customs and Revenue Agency. 10. Section 4 of Schedule III to the Guidelines is replaced by the following: 4. Deduct any amount of social assistance income that is not attributable to the spouse. 11. Section 10 of Schedule III to the Guidelines is replaced by the following: 10. Where the spouse reports income from self-employment that, in accordance with sections 34.1 and 34.2 of the <i>Income Tax Act</i>, includes an additional amount earned in a prior period, deduct the amount earned in the prior period, net of reserves. 12. Subsection 13(2) of Schedule III to the English version of the Guidelines is replaced by the following: (2) If the spouse has disposed of the shares during a year, deduct from the income for that year the difference determined under subsection (1).	
"taxable income" « revenu imposable »		
Child support		
Social assistance		
Additional amount		
Disposal of shares		
	7. (1) La définition de « taux d'imposition moyen », à l'article 1 de l'annexe II des mêmes lignes directrices, est abrogée. (2) La définition de « revenu imposable », à l'article 1 de l'annexe II des mêmes lignes directrices, est remplacée par ce qui suit : « revenu imposable » Revenu annuel imposable déterminé selon le calcul prévu dans la formule T1 Générale établie par l'Agence des douanes et du revenu du Canada. 8. (1) L'alinéa 1a) de l'annexe III des mêmes lignes directrices est abrogé. (2) L'article 1 de l'annexe III des mêmes lignes directrices est modifié par adjonction, après l'alinéa f), de ce qui suit : f.1) l'alinéa 8(1)h.1) concernant les frais afférents à un véhicule à moteur; 9. L'article 2² de l'annexe III des mêmes lignes directrices est remplacé par ce qui suit : 2. Déduire tout montant de pension alimentaire pour enfants reçu qui est inclus dans le revenu total selon la formule T1 Générale établie par l'Agence des douanes et du revenu du Canada. 10. L'article 4 de l'annexe III des mêmes lignes directrices est remplacé par ce qui suit : 4. Déduire tout montant des prestations d'assistance sociale qui n'est pas attribuable à l'époux. 11. L'article 10 de l'annexe III des mêmes lignes directrices est remplacé par ce qui suit : 10. Dans le cas d'un époux qui est un travailleur indépendant et qui déclare dans son revenu à ce titre un montant additionnel gagné auparavant, selon les articles 34.1 et 34.2 de la <i>Loi de l'impôt sur le revenu</i>, déduire ce montant additionnel, net de toute provision. 12. Le paragraphe 13(2) de l'annexe III de la version anglaise des mêmes lignes directrices est remplacé par ce qui suit : (2) If the spouse has disposed of the shares during a year, deduct from the income for that year the difference determined under subsection (1).	« revenu imposable » "taxable income"
	COMING INTO FORCE 13. These Guidelines come into force on November 1, 2000.	ENTRÉE EN VIGUEUR 13. Les présentes lignes directrices entrent en vigueur le 1^{er} novembre 2000.

REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the Guidelines.)

Description

These Guidelines amend the *Federal Child Support Guidelines* which, pursuant to the *Divorce Act*, have been in force since May 1, 1997. The Guidelines were previously amended on December 9, 1997 and on April 1, 1999.

RÉSUMÉ DE L'ÉTUDE D'IMPACT DE LA RÉGLEMENTATION

(Ce résumé ne fait pas partie des Lignes directrices.)

Description

Les présentes Lignes directrices modifient les *Lignes directrices fédérales sur les pensions alimentaires pour enfants* en vigueur depuis le 1^{er} mai 1997, conformément à la *Loi sur le divorce*. Les Lignes directrices ont été modifiées pour la première fois le 9 décembre 1997, puis de nouveau le 1^{er} avril 1999.

Analysis of the case law interpreting the *Federal Child Support Guidelines* and consultations with the provinces and territories as well as with judges, lawyers, other professionals and some interested members of the public, revealed certain areas requiring technical amendments and the need to clarify ambiguous language in the Guidelines. The current drafting of certain sections in the Guidelines may complicate some cases unnecessarily and give unintended results in others.

In order to correct these areas and to clarify the intent, the *Federal Child Support Guidelines* are amended as follows:

1. Special Expenses — Subsection 7(1)

Under subsection 7(1) of the Guidelines, both parents can request an amount to cover special or extraordinary expenses. The amendment to subsection 7(1) will allow parents and/or the court to estimate the amount of the expenses in situations where the exact amount cannot be determined at the time of the order. This is intended to improve the efficiency of the legal process and reduce legal costs to parents who want an order for special expenses but cannot immediately determine the amount of the expense.

The last comma in subsection 7(1) is removed and the words "having regard" are replaced with "in relation" in the English version to make it consistent with the French wording, which is the correct version. No similar amendment is made to the French subsection.

2. Health Related Expenses — Paragraph 7(1)(c)

The reference to "per illness or event" is removed to address situations where children have several illnesses or health-related events for which the expenses are less than \$100 each, but that total more than \$100 for the year.

3. Educational Expenses — Paragraph 7(1)(d)

The word "other" is added to the English version to make it consistent with the French wording, which is the correct version. No amendment is made to the French section.

4. Circumstances for variation — Section 14

In light of conflicting court of appeal decisions from across the country, this section is amended to properly reflect its intent. All of the circumstances for variation listed in section 14, including paragraph (c), are changes in circumstance that a court can rely on to vary an order. Where there is such a change, for example as listed in paragraph (c), which refers to a situation where an order is made before May 1, 1997, the intent is that the court vary the order and apply the *Federal Child Support Guidelines*. The Guidelines are designed to provide a fair standard of support for children in light of the parents' ability to contribute.

The court may decide not to apply the *Federal Child Support Guidelines* where parents have an agreement or order made before or after May 1, 1997 that includes a special provision that benefits the child. In this case, the court may take the agreement into account pursuant to subsection 17(6.2) of the *Divorce Act*

L'analyse de la jurisprudence interprétant les *Lignes directrices fédérales sur les pensions alimentaires pour enfants* et les consultations avec les provinces et les territoires, ainsi qu'avec les juges, les avocats, d'autres professionnels et certains membres du public, ont fait ressortir la nécessité de procéder à des modifications de forme dans certains domaines et de clarifier du langage ambigu dans les Lignes directrices. La version actuelle de certaines dispositions des Lignes directrices peut compliquer inutilement certaines affaires et donner des résultats non voulus dans d'autres.

Afin d'apporter les corrections voulues et de préciser l'intention, les *Lignes directrices fédérales sur les pensions alimentaires pour enfants* sont modifiées comme suit :

1. Dépenses spéciales — paragraphe 7(1)

En vertu du paragraphe 7(1) des Lignes directrices, les deux parents peuvent demander un montant pour couvrir des dépenses spéciales ou extraordinaires. La modification au paragraphe 7(1) permettra aux parents et au tribunal d'estimer le montant des dépenses dans les cas où le montant exact ne peut pas être déterminé au moment de l'ordonnance. Cette modification vise à améliorer l'efficacité du processus judiciaire et à réduire les frais pour les parents qui désirent une ordonnance pour des dépenses spéciales, mais qui ne peuvent alors en déterminer le montant.

La dernière virgule du paragraphe 7(1) est supprimée et les mots « having regard » sont remplacés par les mots « in relation » dans la version anglaise afin de la rendre conforme à la version française, qui est la version correcte. Aucune modification similaire n'est apportée à la version française.

2. Les frais relatifs aux soins de santé — alinéa 7(1)(c)

L'expression « par maladie ou événement » est supprimée afin d'inclure les situations dans lesquelles les enfants souffrent de plusieurs maladies ou ont divers problèmes de santé entraînant des dépenses inférieures à 100 \$ pour chaque maladie ou problème si le total des dépenses excède 100 \$ pour l'année.

3. Les frais relatifs aux études — alinéa 7(1)(d)

Le mot « other » est ajouté dans la version anglaise afin de la rendre conforme à la version française, qui est la version correcte. Aucune modification n'est apportée à la version française.

4. Changements de situation — article 14

À la lumière de décisions divergentes des cours d'appel à l'échelle du pays, cette disposition est modifiée afin de bien refléter son intention. Toutes les situations donnant lieu à changement énumérées à l'article 14, y compris l'alinéa c), sont des changements de situation sur lesquels le tribunal peut s'appuyer pour modifier une ordonnance. Lorsqu'il y a un tel changement, par exemple celui énuméré à l'alinéa c) qui renvoie à une situation dans laquelle l'ordonnance a été rendue avant le 1^{er} mai 1997, l'intention est de faire en sorte que le tribunal modifie l'ordonnance et applique les *Lignes directrices fédérales sur les pensions alimentaires pour enfants*. Les Lignes directrices sont conçues pour procurer un niveau de soutien équitable aux enfants, tout en tenant compte de la capacité de payer des parents.

Le tribunal peut décider de ne pas appliquer les *Lignes directrices fédérales sur les pensions alimentaires pour enfants* si les parents sont liés par une entente ou une ordonnance faite avant ou après le 1^{er} mai 1997 qui prévoit une disposition spéciale accordant un avantage à l'enfant. Dans ce cas, le tribunal peut prendre

and decline to make a variation order as the amount set by the Guidelines may not be appropriate in that situation.

5. Calculation of Annual Income — Section 16

The section is amended to reflect the change of name from Revenue Canada to the Canada Customs and Revenue Agency.

6. Pattern of Income — Subsection 17(1)

Subsection 17(1) has been reworded to clarify that the court should only consider past income when the income amount determined under section 16 would be unfair, and to consider a parent's pattern of income or fluctuations in income or the receipt of a non-recurring amount when determining the income amount.

The former paragraph (a) of subsection 17(1) was redundant when read with section 16, therefore it is removed. In cases where a parent's income is increasing or decreasing steadily, the criteria set out in sections 2(3) and 16 are applicable. The annual income is determined using the most recent information.

Reference to a "source" of income, which is also found in section 16, is removed. Under section 16, the court will determine income using the "sources" of income set out in the T1 General form issued by the Canada Customs and Revenue Agency. Section 17 applies to cases where the amount determined under section 16 would not provide a fair amount. Therefore the reference to "sources" in section 17 is unnecessary.

Paragraphs (b) and (c) are collapsed into subsection 17(1). However, the intent of the application of subsection 17(1) remains unchanged in regard to these paragraphs. The section has simply been reworded to make it easier to use.

7. Imputing Income — Paragraph 19(1)(h)

The paragraph already dealt with income taxed at a lower rate. The amendment is to clarify that income can also be imputed in situations where the income source is exempt from taxation.

8. Obligation of Applicant — Paragraph 21(1)(b)

By changing the "or" to an "and", the amendment clarifies that both the notice of assessment and, if issued, reassessment are required.

9. Obligation of Applicant — Paragraph 21(1)(h)

This amendment adds several documents to the list of items required to be disclosed in child support cases. The list will help parents and the court with the task of determining income by providing information that may not necessarily be disclosed in the other income documents listed in subsection 21(1).

10. Undue Hardship Test — Schedule II (Comparison of Household Standards of Living Test), Section 1

The definition of "average tax rate" is no longer needed in light of the amendments made to the Guidelines in December 1997 and is therefore removed.

en considération l'entente en vertu du paragraphe 17(6.2) de la *Loi sur le divorce* et refuser d'accorder une ordonnance modificative s'il juge que le montant déterminé par les Lignes directrices serait inapproprié en l'espèce.

5. Calcul du revenu annuel — article 16

Cet article est modifié de façon à refléter le changement de nom de Revenu Canada, dorénavant appelé l'Agence des douanes et du revenu du Canada.

6. Tendance du revenu — paragraphe 17(1)

Le paragraphe 17(1) a été remanié pour préciser que le tribunal ne devrait tenir compte du revenu passé que lorsque le montant du revenu calculé conformément à l'article 16 serait inéquitable, et tenir compte d'une tendance du revenu ou de fluctuations du revenu, ou de la réception d'une somme non récurrente du parent lors de la détermination du revenu.

L'ancien alinéa a) du paragraphe 17(1) a été supprimé parce que redondant avec l'article 16. Dans le cas où le revenu d'un parent augmente ou diminue de façon constante, les critères établis au paragraphe 2(3) et à l'article 16 s'appliquent. Le revenu annuel est calculé à l'aide des renseignements les plus à jour.

Le mot « source » de revenu qui se retrouve déjà dans l'article 16 est supprimé. En vertu de l'article 16, le tribunal déterminera le revenu utilisant les « sources » de revenu figurant dans la formule T1 Générale établie par l'Agence des douanes et du revenu du Canada. L'article 17 s'applique dans les cas où le calcul du revenu à l'article 16 ne fournirait pas un montant équitable. Donc, la mention du mot « source » est inutile.

Les alinéas b) et c) sont regroupés au paragraphe 17(1). Cependant, le but du paragraphe 17(1) demeure le même en ce qui concerne ces alinéas. Cette disposition a tout simplement été modifiée pour en faciliter l'utilisation.

7. Attribution de revenu — alinéa 19(1)(h)

Cet alinéa traitait déjà du revenu imposé à un taux moindre. La modification précise que le revenu peut aussi être imputé dans les situations où la source de revenu est exonérée d'impôt.

8. Obligation du demandeur — alinéa 21(1)(b)

En changeant « ou » par « et », la modification spécifie que tant l'avis de cotisation que l'avis de nouvelle cotisation, s'il en est, sont requis.

9. Obligation du demandeur — alinéa 21(1)(h)

Cette modification ajoute plusieurs documents à la liste des documents à joindre dans les affaires de pensions alimentaires. Cette liste aidera les parents et le tribunal à calculer le montant du revenu en fournissant des renseignements qui ne figurent pas nécessairement dans les autres documents sur le revenu énumérés au paragraphe 21(1).

10. Critère des difficultés excessives — annexe II (méthode de comparaison des niveaux de vie des ménages), article premier

La définition de « taux d'imposition moyen » est supprimée ; elle était devenue superflue depuis les modifications apportées aux Lignes directrices en décembre 1997.

11. Undue Hardship Test — Schedule II (Comparison of Household Standards of Living Test), Section 1

The definition of "taxable income" is amended to reflect the change of name from Revenue Canada to the Canada Customs and Revenue Agency.

12. Employment Expenses — Schedule III, Paragraph 1(a)

The deduction for clergyman's residence is removed. The deduction in paragraph (a) differs from the other deductions in section 1 because it allows a member of the clergy to deduct an amount in respect of his or her personal residence. Although the *Income Tax Act* permits such a deduction, the deduction is removed for the purposes of determining income under the Guidelines.

13. Employment Expenses — Schedule III, Section 1

A paragraph is added to include a deduction concerning motor vehicle travel expenses incurred by an employee. This deduction under the Guidelines is only applicable in the following situations:

An employee who:

- (a) is ordinarily required to work away from his or her employer's place of business or in different places;
 - (b) is required by his or her employer to pay his or her own traveling expenses; and
 - (c) does not receive an allowance for traveling expenses from his or her employer which is tax exempt,
- may deduct motor vehicle expenses incurred.

14. Child Support — Schedule III, Section 2

The amendment reflects the change of name from Revenue Canada to the Canada Customs and Revenue Agency.

15. Social Assistance — Schedule III, Section 4

The amendment clarifies that only the social assistance attributable to the parent is to be included in the parent's income and social assistance income received by the parent for other persons should be deducted from income. Also, the amendment adopts wording that is used in the other sections in Schedule III to provide consistency.

16. Additional Amount — Schedule III, Section 10

As the fiscal year-end of the parent's business may not fall on December 31, reference to that date is removed. In addition, the section is clarified by referring to the relevant sections of the *Income Tax Act*.

The French version of section 10 is further amended by replacing the word "réserve" with the word "provision", which is the word that appears in the *Income Tax Act*. As the correct word is used in the English version, no amendment is made to the English version.

17. Employee Stock Options — Schedule III, Subsection 13(2)

The word "a" is substituted for the word "the" to make the subsection consistent with the French wording, which is the correct version. The previous English version could have led to an unintended result when applied by parents and the court. No amendment is made to the French version.

11. Critère des difficultés excessives — annexe II (méthode de comparaison des niveaux de vie des ménages), article premier

La définition de « revenu imposable » est modifiée de façon à refléter le changement de nom de Revenu Canada, dorénavant appelé l'Agence des douanes et du revenu du Canada.

12. Dépenses d'emploi — annexe III, alinéa 1(a)

La déduction concernant la résidence des membres du clergé est supprimée. La déduction de l'alinéa a) diffère des autres déductions de l'article premier parce qu'elle permet à un membre du clergé de déduire un montant en considération de sa résidence personnelle. Même si la *Loi de l'impôt sur le revenu* permet une telle déduction, cette déduction est supprimée aux fins de calculer le revenu en vertu des Lignes directrices.

13. Dépenses d'emploi — annexe III, article premier

Un alinéa est ajouté pour inclure aux déductions les frais afférents à un véhicule à moteur engagés par un employé. Cette déduction en vertu des Lignes directrices s'applique uniquement dans les situations suivantes :

l'employé qui :

- a) doit habituellement travailler ailleurs qu'à l'établissement de son employeur ou dans des endroits différents ;
 - b) doit payer ses propres frais de déplacement ;
 - c) ne reçoit pas d'allocation de son employeur pour ses frais de déplacement lesquels sont exonérés d'impôt ;
- peut déduire les frais engagés afférents à un véhicule à moteur.

14. Pension alimentaire pour enfants — annexe III, article 2

Cette modification reflète le changement de nom de Revenu Canada, dorénavant appelé l'Agence des douanes et du revenu du Canada.

15. Assistance sociale — annexe III, article 4

Cette modification précise que seul le montant des prestations d'assistance sociale attribuable au parent doit être inclus dans le revenu du parent et que les prestations d'assurance sociale reçues par le parent pour d'autres personnes devraient être déduites du revenu. Également, la modification adopte la terminologie utilisée dans les autres dispositions de l'annexe III afin d'assurer l'uniformité.

16. Montant additionnel — annexe III, article 10

Puisque la fin de l'exercice financier pour l'entreprise du parent ne se termine pas nécessairement le 31 décembre, on ne mentionne plus cette date. De plus, cet article est maintenant plus précis, car il fait maintenant mention des dispositions applicables de la *Loi de l'impôt sur le revenu*.

La version française de l'article 10 est en outre modifiée par le remplacement du terme « réserve » par le terme « provision », qui est le terme utilisé par la *Loi de l'impôt sur le revenu*. Le mot juste étant utilisé dans la version anglaise, cette version n'est pas modifiée.

17. Les options d'achat d'action — annexe III, paragraphe 13(2)

Le terme « a » est remplacé par le terme « the » dans la version anglaise afin de la rendre conforme à la version française, qui est correcte. L'ancienne version anglaise aurait pu mener à un résultat non voulu lorsqu'appliquée par les parents et le tribunal. La version française n'est pas modifiée.

This section will require a further amendment in 2001 to reflect changes to the income tax rules announced in the Federal Government's 2000 Budget.

Alternatives

The amendments to the Guidelines are technical in nature. They are needed to correct certain areas and to clarify the intended application of certain sections, to make the English and the French versions consistent and to reflect the current title of the Canada Customs and Revenue Agency. These amendments are the only practical alternatives to the status quo. This is based on a thorough review of the case law and consultations with all the jurisdictions regarding the amendments.

Benefits and Costs

These amendments to the *Federal Child Support Guidelines* will not result in any additional costs to the Federal Government. There could be some minor additional costs to the provinces and territories for amendments to their provincial Guidelines. The Department of Justice Canada is coordinating the implementation of the child support reforms with the provinces and territories. As such, a \$50 million fund was established to assist them with implementation of the Guidelines. As the provinces and territories are responsible for the administration of justice, the Department of Justice has been working closely with them to ensure that they will be able to amend their own child support systems in order to reflect these changes. An additional allocation of \$29 million in assistance to the provinces and territories over two years will bolster existing efforts in this area and will ensure that the family law system always addresses the needs and best interests of children in circumstances of separation and divorce.

The benefits of these amendments include increased clarity in the language and intent of the Regulation, therefore facilitating application of the Guidelines and helping them to meet the objectives.

Consultation

The amendments to the Federal Guidelines were developed in close consultation with the Federal/Provincial/Territorial Family Law Committee. The Child Support Advisory Committee was also consulted at the preliminary stage. Many of these amendments were the subject of a written consultation in the fall of 1999. The consultation paper was posted on the Department of Justice Canada Web site at that time. During the consultation process, the interested public was asked to comment on the proposed changes to the *Federal Child Support Guidelines*. Some of the comments we received helped to identify which amendments to make. The proposed changes were subsequently further refined. These amendments were pre-published for fifteen days in the *Canada Gazette*, Part I, on July 1, 2000 and no comments were received.

Cet article devra être modifié à nouveau en 2001 pour refléter les modifications aux règles en matière fiscale annoncées par le gouvernement fédéral dans son budget de l'année 2000.

Solutions envisagées

Des modifications de forme sont apportées aux Lignes directrices. Ces modifications sont nécessaires pour corriger certains aspects et spécifier l'application prévue de certaines dispositions, faire correspondre les versions anglaise et française et refléter la nouvelle appellation de l'Agence canadienne des douanes et du revenu. Ces modifications constituent la seule solution de rechange pratique au statu quo. Elles reposent sur un examen exhaustif de la jurisprudence et sur les consultations avec les provinces et les territoires concernant les modifications.

Avantages et coûts

Ces modifications aux *Lignes directrices fédérales sur les pensions alimentaires pour enfants* n'entraîneront pas de coûts additionnels pour le gouvernement fédéral. Il pourrait y avoir pour les provinces et les territoires certains coûts additionnels minimums pour modifier leurs lignes directrices provinciales. Le ministère de la Justice du Canada coordonne la mise en oeuvre des réformes sur la pension alimentaire pour enfants avec les provinces et les territoires. À cet égard, un fonds de 50 millions de dollars a été établi pour les aider dans la mise en oeuvre des lignes directrices. Étant donné que les provinces et les territoires sont responsables de l'administration de la justice, le ministère de la Justice a travaillé en étroite collaboration avec eux pour s'assurer qu'ils seraient en mesure de modifier leurs propres systèmes de pensions alimentaires pour enfants en fonction des modifications. Une enveloppe supplémentaire de 29 millions de dollars, destinée à aider les provinces et territoires pour une période de deux ans, stimulera les efforts en cours dans ce domaine et fera en sorte que le système de droit de la famille soit toujours en mesure de répondre aux besoins et de veiller aux meilleurs intérêts des enfants en cas de séparation et de divorce.

Ces modifications ont notamment pour effet de préciser les termes et l'intention des Lignes directrices, facilitant ainsi l'application de celles-ci et faisant en sorte qu'elles satisfassent aux objectifs.

Consultations

Ces modifications aux Lignes directrices fédérales ont été élaborées en étroite collaboration avec le Comité fédéral-provincial-territorial du droit de la famille. Le Comité consultatif sur les pensions alimentaires pour enfants a également été consulté à l'étape préliminaire. Plusieurs de ces modifications ont fait l'objet d'une consultation écrite à l'automne 1999. À l'époque, le document de consultation figurait sur le site Web du ministère de la Justice du Canada. Pendant le processus de consultation, on a demandé au public intéressé de commenter les modifications proposées aux *Lignes directrices fédérales sur les pensions alimentaires pour enfants*. Certains des commentaires reçus nous ont aidés à définir les modifications à apporter. Les modifications proposées ont été précisées davantage par la suite. Ces amendements ont été publiés au préalable dans la *Gazette du Canada* Partie I le 1 juillet 2000 pendant quinze jours et aucune observation n'a été reçue.

Compliance and Enforcement

These amendments are made to assist parents and the courts in complying with the intention of the Guidelines.

Contact

Lise Lafrenière Henrie
Senior Counsel
Coordinator, Legal Policy
Child Support Team
284 Wellington Street
Ottawa, Ontario
K1A 0H8
Tel.: (613) 957-0059
FAX: (613) 952-9600

Respect et exécution

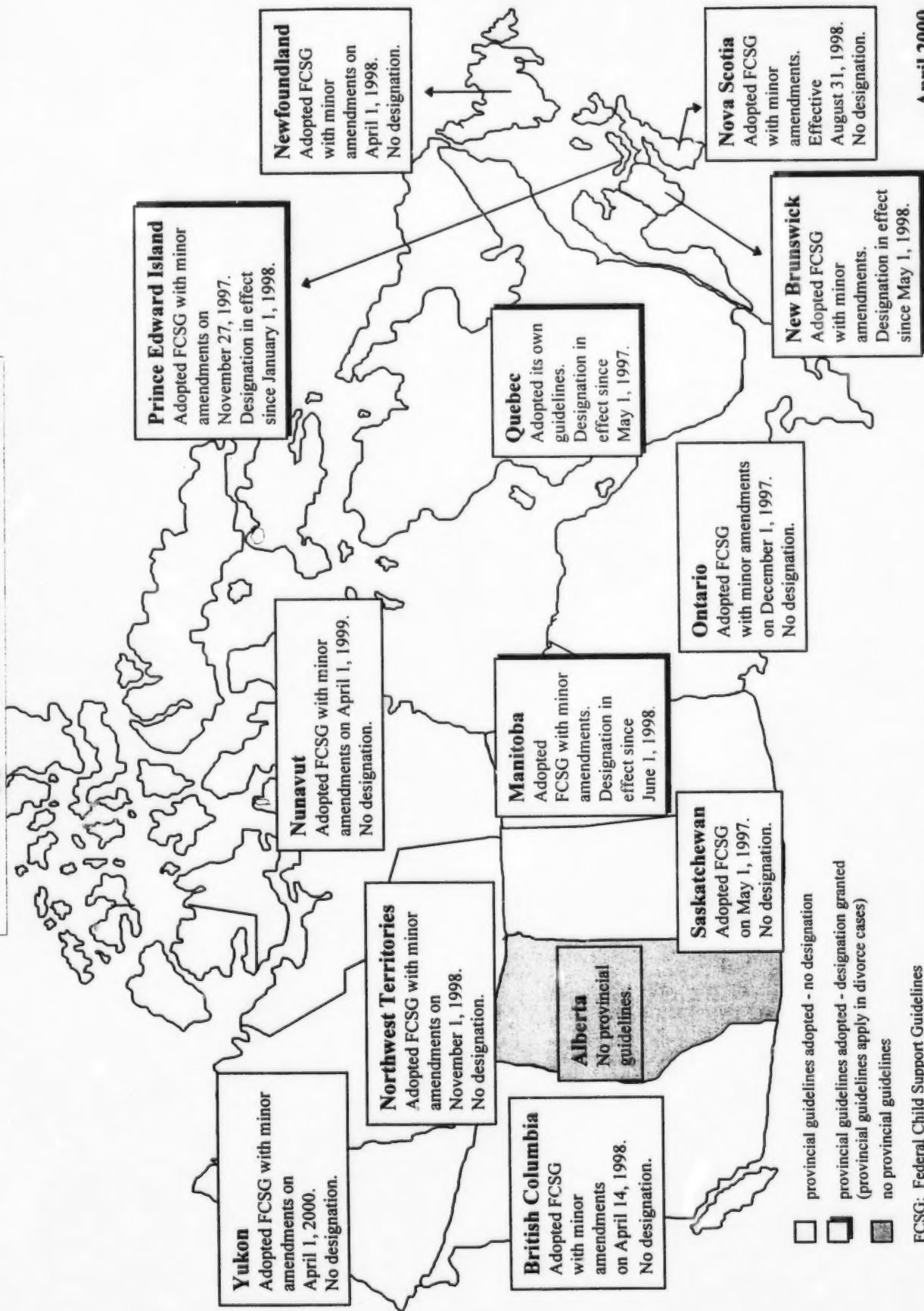
Les présentes modifications visent à aider les parents et les tribunaux à se conformer aux objectifs des Lignes directrices.

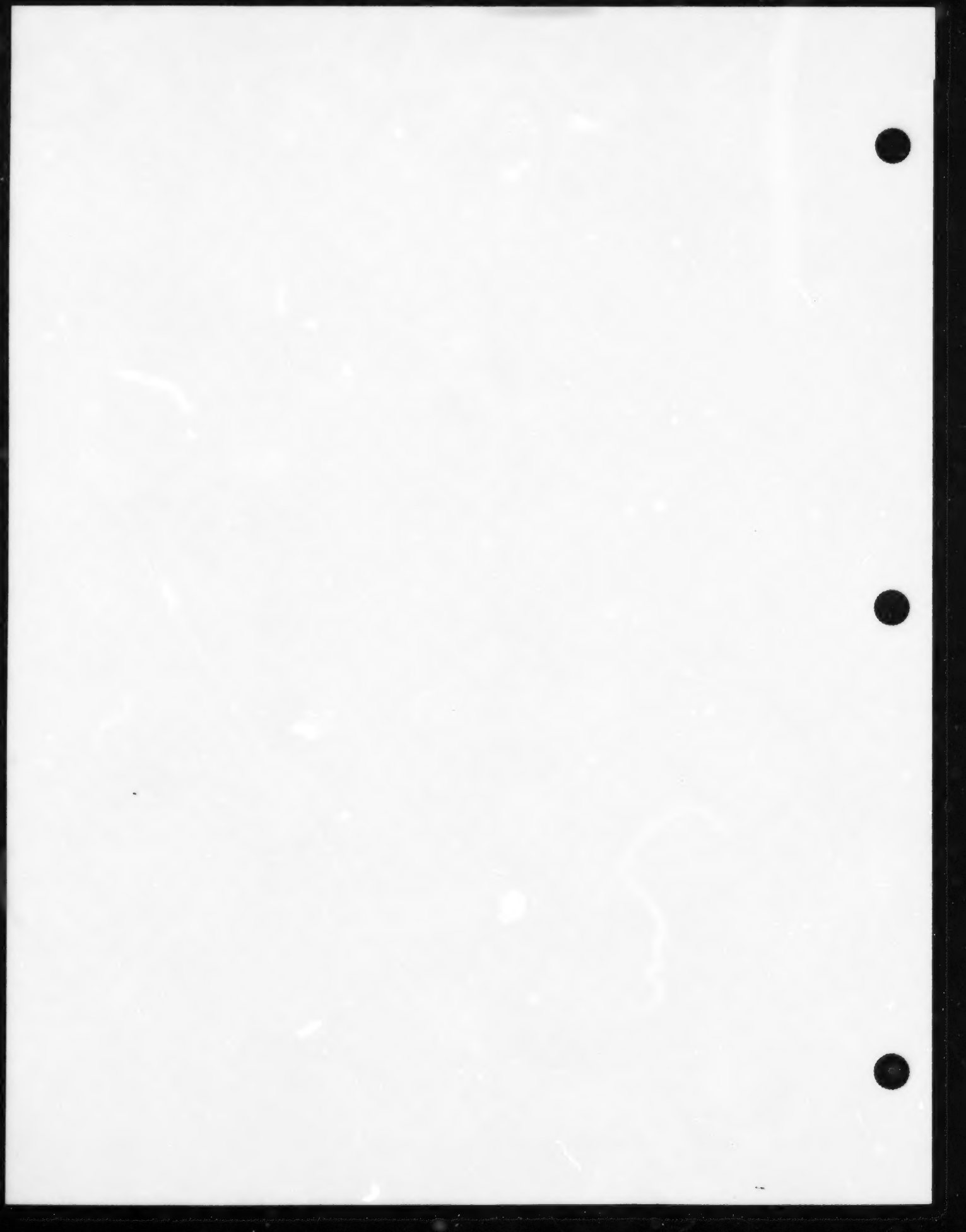
Personne-ressource

Lise Lafrenière Henrie
Avocate conseil
Coordonnatrice des politiques
Équipe sur les pensions alimentaires pour enfants
284, rue Wellington
Ottawa (Ontario)
K1A 0H8
Tél. : (613) 957-0059
TÉLÉCOPIEUR : (613) 952-9600



Child Support Guidelines Across Canada





Fact Sheet

Canada Child Tax Benefit — Which parent is entitled to it?

The Canada Customs and Revenue Agency (CCRA) is responsible for administering the Canada Child Tax Benefit (CCTB). The CCTB is a tax-free monthly payment for children under the age of 18, and is intended to help families with the cost of raising their children. The CCTB is calculated for a 12-month period beginning in July of one year and ending in June of the following year. While there are many different family situations to which the CCRA must respond in its administration of the CCTB, this article focuses only on those situations involving separated or divorced parents.

When parents separate or divorce, the CCTB may be an important consideration during custody and child support negotiations. For this reason, it is important to note that the *Income Tax Act* (Act) is the legal authority for determining which parent is entitled to the CCTB. Too often, the CCRA is made aware of the frustration and financial hardship suffered by parents who are subject to court orders or written agreements containing CCTB entitlement provisions that are contrary to those set out in the Act, or that reflect circumstances that have changed. This article attempts to explain some of the legislative rules¹ the CCRA is obliged to use to determine which parent is entitled to the CCTB.

Information on the CCTB application form and on the applicant's and the cohabiting spouse's² income tax returns for the previous year is used by the CCRA to determine who receives the CCTB as well as the amount of the CCTB.³ Provided certain other criteria are satisfied, the CCRA pays the parent⁴ who resides with the child⁵ and who primarily fulfils the responsibility for the care and upbringing of the child. Generally, when the female parent resides with the child, she is presumed to be the person who fulfils this latter responsibility.⁶ Therefore, when the father and the mother reside together, it is the mother who is normally paid the CCTB.⁷

¹ For complete rules and guidelines, see section 122.6 of the *Income Tax Act* and Part LXIII of the *Income Tax Regulations*.

² "Cohabiting spouse" and "spouse" are defined in section 122.6 and subsection 252(4) of the Act, respectively. With the passage of Bill C-23, effective January 1, 2001, subsection 252(4) is repealed. Also effective January 1, 2001, the term "cohabiting spouse" is replaced with the term "cohabiting spouse or common law partner" and, under a new definition in subsection 248(1), the term "common law partner" includes persons of both the opposite and the same sex who live common law.

³ Section 122.61 of the Act sets out the complete formula for the CCTB calculation. It is based on adjusted income, defined in section 122.6 of the Act, which is basically the combined income of the applicant and the applicant's cohabiting spouse.

⁴ Parent is defined in subsection 252(2) of the Act.

⁵ Child is defined in subsection 252(1) of the Act.

⁶ The "resides with", "primary care" and "female presumption" rules, as well as other criteria, that have to be satisfied to be entitled to the CCTB, are found in the definition of "eligible individual" in section 122.6 of the Act. Note that the phrase "primarily fulfils the responsibility for" implies that only one parent is entitled to the CCTB for any given month.

⁷ There are exceptions to the "female presumption" rule and these are outlined in section 6301 of the *Income Tax Regulations*.



It is important to note here that the Act contemplates only one parent being eligible to receive the CCTB for any given month. It does not provide for proration of the monthly CCTB between the parents.

The remainder of this article will discuss the manner in which the CCRA deals with circumstances in which parents have separated or divorced. The discussion is premised on the following assumptions:

- the parents have separated for a period of more than 90 days as a result of a breakdown in their marriage or relationship, or have divorced;
- the child spends considerable periods of time with the two parents at their respective residences; and
- the two parents have each applied for the CCTB for the same child.

In the above situation, the CCRA will conduct a review to determine which parent qualifies for the CCTB. It will start by determining whether the child actually resides with one parent and simply visits the other, or whether the child indeed resides with both parents.⁸ If it is determined that the child resides with both parents, then a determination is done to establish who is primarily responsible for the care and upbringing of the child. This determination is done through the use of prescribed factors that reflect the care and nurturing needs of the average child.⁹ The existence of a court order is only one of several factors.

Usually the review confirms that the parent who has custody of the child the majority of the time is the primary caregiver and, therefore, eligible to receive the CCTB. It is often found, where custody is shared equally, that both parents satisfy the "resides with" and "primary care" requirements. In this event, the CCRA will pay one parent for six months and then rotate the payments to the other parent for the next six months.¹⁰ The rotational payments will begin with the parent who previously had not been the regular CCTB recipient.

Both parents are notified of the results of the review. Should either of the parents be dissatisfied with the results, the normal appeal rights which exist for other income tax matters apply.¹¹ Moreover, in lieu of the rotational payments, the parents may mutually agree to and request one of the following alternate arrangements:

1. where there are two or more children, payment of the CCTB to one parent for one or more children, and payment of the CCTB to the other parent for the remaining child or children;¹² or
2. payment of the CCTB to one parent only. The other parent will then claim the equivalent-to-spouse amount as a non-refundable credit on his or her income tax return.¹³

⁸ It is not necessary that the child live with a parent at least 50% of the time for a child to be considered residing with a parent.

⁹ See section 6302 of the Regulations for a description of the eight factors taken into consideration.

¹⁰ The amount to be paid to each parent will depend on their respective family incomes. Unfortunately at this time, administrative and economic constraints prevent us from rotating the payments more frequently.

¹¹ Section 165 of the Act deals with appeal provisions.

¹² See footnote 10.

A request for an alternate arrangement, or for a return to rotational payments, is possible at any time. However, once rotational payments are implemented, that arrangement has to continue for at least one year. The exception, of course, is when a parent ceases to meet any of the eligibility criteria. In this event, the parent should immediately notify the CCRA so that payments can be stopped, thus avoiding the need for the CCRA to recover benefits to which that parent was not entitled.

As can be seen from the above, it is the provisions of the *Income Tax Act* that dictate to whom the CCTB is paid. Payment is not based on rules of family law or on other legal arrangements affecting the parents. Knowledge of the legislative requirements, by both parents and their representatives, will help to minimize the level of frustration and financial hardship that parents may experience during an already difficult period.

If you would like more information, please visit the "Child and Family Benefits" page on the CCRA's Web site at www.ccra-adrc.gc.ca on the Internet. You can also obtain information by calling toll-free 1-800-387-1193, or by writing to:

Benefit Eligibility Section
Benefit Programs Directorate
Canada Customs and Revenue Agency
18th Floor, Tower B
355 River Road
Vanier, Ontario
K1A 0L5

¹³ This is an option only when one of the parents satisfies all of the criteria that apply to equivalent-to-spouse (ETS) amounts found in section 118 of the Act. For example, pursuant to subsection 118(5), a parent can not claim an ETS amount for a child if the parent was required to pay (whether or not he or she actually did pay) support on behalf of that child.